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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 82

ITALIA SOCIETA PER AZIONI DI NAVIGAZIONE, PETITIONER

v.

OREGON STEVEDORING COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the district court (R. 21–23) is unreported. The majority and dissenting opinions of the Court of Appeals for the Ninth Circuit (R. 43–54; 54–64) are reported at 310 F. 2d 481.

JURISDICTION

The judgment of the court of appeals was entered on October 25, 1962 (R. 64–65). A timely petition for rehearing was denied (one judge dissenting) on December 5, 1962 (R. 65). The petition for a writ of certiorari was filed on February 27, 1963, and granted on April 15, 1963 (R. 66; 372 U.S. 963). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a shipowner may recover indemnity from a stevedore for breach of an implied warranty of the fitness of its equipment or for breach of its implied warranty of workmanlike performance where—

(a) the stevedore, without fault, has supplied defective equipment which injures one of its own employees during the course of the stevedoring operation, and

(b) the stevedore's employee has obtained a recovery from the shipowner on the basis of the unseaworthiness of the equipment supplied by the stevedore.

STATEMENT

On November 19, 1958, the respondent stevedoring company, pursuant to a written contract with petitioner steamship company, was engaged in performing stevedoring services on petitioner's vessel, the MS ANTONIO PACINOTTI, in the harbor of Portland, Oregon. In the course of rigging a Seattle hatch tent over an open hatch, a longshoreman named William Griffith, one of respondent's employees, was injured when a tent rope he was pulling snapped because of a latent defect. Griffith was thrown to the deck and sustained personal injuries.

The tent and the defective rope involved in the mishap were owned by respondent and brought on board pursuant to its contractual obligation to supply "all ordinary gear" necessary for the performance of expert stevedoring services on its customer's vessels, as well as all necessary labor and supervision (R. 23a). Under its contract with petitioner, respondent ex-

pressly agreed to be "responsible * * * for injury to or death of any person caused by its negligence" (R. 23a), while petitioner shouldered responsibility for injury or death arising through its negligence or "by reason of the failure of ship's gear and/or equipment" (R. 23b).

The injured longshoreman sued petitioner in the Oregon state courts for negligence and unseaworthiness (R. 24). The case was submitted to a jury on both issues; a general verdict was returned in favor of Griffith; and he recovered a judgment in the amount of $5,953.52 (*ibid.*).

Petitioner then brought suit in the United States District Court for the District of Oregon seeking to recover indemnity from the respondent stevedore for the amount of the judgment. The court found that respondent had overcome "any presumption or inference of negligence" (R. 22), and held that petitioner could not recover for breach of an implied warranty of workmanlike service because the contractual provision expressly imposing liability on respondent for negligence negated any such warranty (R. 23).

The court of appeals (Circuit Judge Jertberg dissenting) affirmed. While expressing no view as to the correctness of the district court's reasoning, the majority held that a stevedoring company is not liable for breach of the warranty of workmanlike service in the absence of negligence (R. 43–65).

INTEREST OF THE UNITED STATES

The scope of the stevedore's liability for breach of its warranty of workmanlike service—a liability

first recognized by this Court in *Ryan Stevedoring Co. Inc.* v. *Pan-Atlantic S.S. Co.*, 350 U.S. 124—has since been the subject of a number of decisions. See *Weyerhaeuser S.S. Co.* v. *Nacirema Co.*, 355 U.S. 563; *Crumady* v. *The J. H. Fisser*, 358 U.S. 423; *Waterman Steamship Corp.* v. *Dugan & McNamara*, 364 U.S. 421; *A. & G. Stevedores* v. *Ellerman Lines, Ltd.*, 369 U.S. 355. As the world's largest shipowner and one of the largest customers of contracting stevedores, repair yards, and other maritime contractors, the United States participated as *amicus curiae* in *Ryan* and in all of the subsequent cases cited above except *A. & G. Stevedores*. Here, again, the United States has a vital interest. If the decision below stands, the government, as a self-insured shipowner, will sustain numerous unrecoverable losses whenever claims are asserted against it by longshoremen injured as a result of defective gear supplied by stevedores and other contractors. Accordingly, we believe it appropriate to file this brief setting forth our views as to the nature of the shipowner's contractual right to reimbursement and the scope of the stevedoring contractor's warranty.

ARGUMENT

INTRODUCTION AND SUMMARY

This is an action by a shipowner against a contracting stevedore to recover damages for breach of the stevedore's implied warranty of workmanlike service. The stevedore, a shoreside specialist in shiploading, was hired to load and unload its customer's vessels and to supply "all ordinary gear" necessary for the stevedoring operation. In discharging this obligation,

the stevedore brought on board a latently defective rope which broke, causing injury to one of its own employees. The injured longshoreman recovered damages from the shipowner for breach of its implied warranty of the "seaworthiness" of the gear. The question presented is whether the shipowner can secure indemnity from the stevedore without showing that the stevedore was negligent.

The legal principles which form the background of the present controversy are well settled. A shipowner owes an absolute, non-delegable duty to provide a seaworthy vessel and fit or "seaworthy" equipment for a longshoreman who, in the employ of a contracting stevedore, boards the vessel to perform the loading or unloading portion of "the ship's work" on behalf of the owner. *Mitchell* v. *Trawler Racer, Inc.*, 362 U.S. 539; *Seas Shipping Co.* v. *Sieracki*, 328 U.S. 85, 95. If the owner engages an expert stevedore to do that work and supply the equipment necessary for its accomplishment, he must still answer to the longshoreman if the gear proves unseaworthy, regardless of whether the stevedore is negligent in furnishing it. *Alaska S.S. Corp.* v. *Petterson*, 347 U.S. 396, affirming 205 F. 2d 478 (C.A. 9). While the owner cannot recover contribution from a stevedore as a joint tortfeasor, *Halcyon Lines* v. *Haenn Ship Ceiling & Refitting Corp.*, 342 U.S. 282, he may claim indemnity on contractual grounds for any liability he incurs as a result of the stevedore's inadequate performance. *Ryan Stevedoring Co., Inc.* v. *Pan-Atlantic S.S. Co.*, 350 U.S. 124. The stevedore's contractual liability,

as the Court has spelled out in several cases, is founded on an implied warranty of "workmanlike service," under which the stevedore undertakes to perform the obligations of the contract with "reasonable safety." *Ryan Stevedoring Co., supra,* p. 5; *Weyerhaeuser S.S. Co.* v. *Nacirema Co.*, 355 U.S. 563, 567; *Crumady* v. *The J.H. Fisser*, 358 U.S. 423, 427–428; *Waterman Steamship Corp.* v. *Dugan & McNamara*, 364 U.S. 421, 423–424. In each of those cases, it appeared that the longshoreman's injury resulted from the stevedore's negligence in handling the cargo or in using equipment. The precise question here is whether, either as part of the warranty of workmanlike service or in addition to it, there is an implied warranty that the equipment furnished by the stevedore is reasonably fit for its purpose and free of all defects, including those which would not be discovered in the exercise of ordinary care.

Since the stevedore's liability is grounded in contract, rather than in tort, it is plain that the absence of negligence, as such, is not a defense. While the court below acknowledged the contractual basis of the liability, it concluded nonetheless that the standard of performance required by the warranty was identical to the standard of ordinary care imposed by the law of torts. We believe, on the contrary, that the warranty holds the stevedore to strict accountability for any defect, latent or otherwise, which renders his equipment "unseaworthy."

In support of this conclusion, we urge (1) that the stevedore's strict responsibility for the seaworthiness of the equipment he brings on board is but a special

application of the implied warranty of fitness which arises whenever chattels are supplied for a particular purpose to one who relies on the supplier's skill or judgment; (2) that the protective policy which gives rise to the shipowner's absolute duty of seaworthiness demands that the burden of liability for non-negligent shipboard injury be shifted from the owner to the stevedore in circumstances where it is he, rather than the owner, who is in a position to minimize the risk of such injury; and (3) that the prior decisions of this Court implicitly or explicitly endorse the view that, as part of his implied warranty of workmanlike service, the stevedore warrants the equipment he supplies against latent defects.

We take no position as to the subsidiary question whether the contractor's implied warranty to its customer is negated by the terms of the particular contract involved in this case. That issue was not considered by the court of appeals and is not, we believe, fairly comprehended within the questions presented by the petition for certiorari. In any event, the interest of the United States is confined to the basic issue, *i.e.*, the scope of the stevedore's implied warranty in the absence of a contractual disclaimer.

THE STEVEDORE'S WARRANTY MAKES HIM STRICTLY ACCOUNTABLE TO THE SHIPOWNER FOR ANY DEFECT, LATENT OR OTHERWISE, WHICH RENDERS HIS EQUIPMENT UNSEAWORTHY

1. That the stevedore is strictly accountable for latent defects in the equipment he supplies pursuant

to a contract is but a specific application of a basic common law principle. It is well established that a retailer or manufacturer who sells goods for a known purpose to a buyer who relies on his skill or judgment makes an implied warranty that those goods are reasonably fit for that purpose.[1] The warranty of fitness, moreover, is not confined to the law of sales. It arises also in the case of leases and other bailments—indeed, whenever goods are supplied under a contract to one who places reliance upon the supplier's proficiency and prudence.[2] Thus, a shipowner who supplies equipment to a stevedore for use in unloading the ship is liable, on an implied warrant of fitness, to indemnify the stevedore if defects in the equipment cause injury to one of its longshoremen employees. *Mowbray* v. *Merryweather* [1895] 2 Q.B. 640; *Hagans* v. *Farrell Lines*, 237 F. 2d 477 (C.A. 3). One who ships goods by common carrier impliedly warrants that both the goods (*Bamfield* v.

[1] The warranty applied is, of course, that stated in Section 15(1) of the Uniform Sales Act, 1 Uniform Laws Annotated (1950 ed.) 15 which provides:

"(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose."

Section 2-315 of the Uniform Commercial Code (U.L.A.) is, in regard to the implied warranty of reasonable fitness, not materially different from the Sales Act.

[2] See, generally, Farnsworth, *Implied Warranties of Quality in Non-Sales Cases*, 57 Col. L. Rev. 653, 656 (fns. 18-24); 1 Frumer and Friedman, *Products Liability*, § 19.02; 68 A.L.R. 2d 850, 855.

Goole and Sheffield Transport Company, Ltd. [1910] 2 K.B. 94) and the containers in which the goods are shipped (*Eastern Motor Express* v. *A. Maschmeijer, Jr., Inc.*, 247 F. 2d 826 (C.A. 2), certiorari denied, 355 U.S. 959; *Vogan & Co.* v. *Oulton* [1899] 81 L.T.N.S. 435, 16 Times Law Reports 37 (C.A.)) are reasonably fit for carriage. One who hires out a crane for use in lifting heavy pipes impliedly warrants its suitability for that purpose and may not recover the stipulated rental if the boom breaks in the course of hoisting the pipes. *Hoisting Engine Sales Company* v. *Hart*, 237 N.Y. 30, 36, 142 N.E. 342. A roller-skating rink warrants the fitness of the skates it rents and is answerable in damages to a customer who is injured because of a defective skate. *Covello* v. *New York*, 17 Misc. 2d 637, 187 N.Y.S. 2d 396.

In the case of sales, it is generally agreed that the implied warranty of fitness is absolute and is not avoided by the fact that the seller is unable, in the exercise of ordinary care, to discover the injury-causing defect.[1] Indeed, it is proper to exclude any evidence offered by the manufacturer to show that due care was used in the manufacturing process. *Hessler* v. *Hillwood Mfg. Company*, 302 F. 2d 61, 63 (C.A. 6); *Simmons* v. *Wichita Coca-Cola Bottling Co.*, 181 Kan.

[1] See, *e.g.*, *Jelleff* v. *Braden*, 233 F. 2d 671 (C.A.D.C.); *American Tank Co.* v. *Revert Oil Co.*, 108 Kan. 690, 694, 196 P. 1111, 1113; *Henningsen* v. *Bloomfield Motors*, 32 N.J. 358, 372, 161 A. 2d 69, 77; *Blessington* v. *McCrory Stores Corp.*, 305 N.Y. 140, 147, 111 N.E. 2d 421, 423; *Canadian Fire Insurance Co.* v. *Wild*, 81 Ariz. 252, 254, 304 P. 2d 390, 391. See generally Williston on *Sales*, § 237 (Rev. ed. 1948 and Supp. 1963); 1 Frumer and Friedman, *Products Liability*, p. 360.

35, 39, 309 P. 2d 633, 636. Although in the non-sale cases there is as yet no clear consensus among the courts,[7] the trend of decision is in the same direction.[8] The leading commentators have consistently taken the position that the liability of suppliers should be

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[7] See, generally, Farnsworth, *Implied Warranties of Quality in Non-Sales Cases*, 57 Col. L. Rev. 653, 655-660, particularly fn. 24, p. 658; 1 Frumer and Friedman, *Products Liability*, § 19.02.

[8] In some instances, the courts have explicitly endorsed the principle that the supplier's warranty of fitness is absolute. *Booth Steamship Co.* v. *Meier & Oelhaf Co.*, 262 F. 2d 310, 314 (C.A. 2); *Eastern Motor Express* v. *A. Maschneijer, Jr. Inc.*, 247 F. 2d 826, 828 (C.A. 2); *Shamrock Towing Co.* v. *Fichter Steel Corp.*, 155 F. 2d 69, 72 (C.A. 2) (dictum). In other cases, that principle is implicit, the court finding a breach of the warranty of fitness without regard, apparently, to whether the supplier was negligent. *Gray Line Co.* v. *Goodyear Tire & Rubber Co.*, 280 F. 2d 294, 298 (C.A. 9) (semble); *Matter of Casualty Co.*, 250 N.Y. 410, 165 N.E. 829; *Hoisting Engine Sales Company* v. *Hart*, 237 N.Y. 30, 36; *Motion Pictures for T.V.* v. *North Dakota Broadcasting Co.*, 87 N.W. 2d 731, 63 A.L.R. 2d 645; *Hilton* v. *Wagner*, 10 Tenn. App. 173, 176; *Marcos* v. *Texas Co.*, 75 Ariz. 45, 46, 48, 251 P. 2d 647; *Schmidt-Hitchcock Contractors* v. *Dunning*, 38 Ariz. 360, 368, 300 Pac. 183; *General Talking Pictures Corp.* v. *Shea*, 187 Ark. 568, 576, 61 S.W. 2d 430; *Famous Players Film Co.* v. *Salomon*, 70 N.H. 120, 121 (applying New York law), 106 Atl. 282; *Gambino* v. *John Lucas & Co.*, 263 App. Div. 1054, 34 N.Y.S. 2d 383; *Standard Oil Co.* v. *Boyle*, 231 App. Div. 101, 102, 246 N.Y. Supp. 142; *Thompson Spot Welder Co.* v. *Dickelman Mfg. Co.*, 15 Ohio App. 270, 274; *Milwaukee Tank Works* v. *Metals Coating Co.*, 196 Wis. 191, 193, 218 N.W. 835; *Covello* v. *New York*, 17 Misc. 2d 637, 187 N.Y.S. 2d 396.

The draftsman of the Uniform Commercial, aware of the developing case law with respect to the nature of the supplier's warranties, stated in a comment (Anderson's Uniform Commercial Code, Section 2-313:1, comment 2 (1961 ed.)):

"Although this section is limited in its scope and direct pur-

co-extensive with that imposed by the law of sales since the considerations which give rise to the implied warranty of fitness, and which justify making that warranty absolute, do not in any way depend upon the passage of title. 4 Williston on *Contracts*, § 1041 (1936 ed.); 2 Harper and James, *The Law of Torts*, § 28.19 (1956); Prosser, on *Torts*, 496 (2d ed. 1955); Farnsworth, *Implied Warranties of Quality in Non-Sales Cases*, 57 Col. L. Rev. 653, 667–674; see, also, 1 Frumer and Friedman, *Products Liability*, § 19.02. The supplier, like the manufacturer and the retailer, derives profit from the bailment or lease of his equipment, and, although he is unable to prevent defects from arising in the course of manufacture, his expert knowledge of the characteristics and history of the equipment surely makes him better able than the user to detect and guard against defects. Accordingly, "[i]t is * * * not less reasonable as an incident of his contract to charge him with the duty of making tests, the omission of which would not constitute negligence, than it is to charge the manufacturer or retailer with a similar responsibility." *Booth Steamship Co.* v. *Meier & Oelhaf Co.*, 262 F. 2d 310, 314 (C.A. 2).

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pose to warranties made by the seller to the buyer as part of a contract for sale, the warranty sections of this Article are not designed in any way to disturb those lines of case law growth which have recognized that warranties need not be confined either to sales contracts or to the direct parties to such a contract. They may arise in other appropriate circumstances such as in the case of bailments for hire, whether such bailment is itself the main contract or is merely a supplying of containers under a contract for the sale of their contents. * * *"

It follows from these principles that a stevedore who sells or leases equipment to a shipowner for use by members of the crew in loading the ship would be strictly liable to the owner for latent defects. There is no reason for a different result here merely because the expert contractor, in addition to providing the gear, also undertook to do the stevedoring work. On the contrary, there is all the more reason to impose liability. The shipowner who performs the stevedoring operation himself has some opportunity to observe the equipment in use and to inspect for latent defects. But where, as here, the equipment remains under the exclusive supervision and control of the stevedore, the owner's reliance upon the stevedore's caution and judgment is complete. It would be anomalous indeed if the owner could obtain indemnification from the supplying stevedore in a case where a member of the crew sustains injury while using latently defective equipment operated by the owner himself, but could not hold the stevedore to account in a case where the latter's own longshoreman employee is injured because of defective equipment exclusively controlled by the stevedore.

2. The policy considerations which favor the imposition of strict liability upon the supplier are particularly compelling in the field of maritime law. This Court has noted time and again that the shipowner's obligation of seaworthiness is rooted in the hazards of the ship's work and in the "humanitarian policy" of safeguarding seamen and longshoremen from the perils of unseaworthiness which they are helpless to ward off. *Reed* v. *The Yaka*, 373 U.S. 410;

Seas Shipping Co. v. *Sieracki*, 328 U.S. 85, 93–95. In part, that policy is served by providing compensation to the injured employee—who, unaided, cannot shoulder the costly disability—at the expense of the shipowner, who can distribute the loss among the shipping community. *Seas Shipping Co.* v. *Sieracki, supra*, at 93. It is no less important, however, that the incidence of liability should fall ultimately upon the party who is best situated to adopt preventive measures. More fundamental than the provision of compensation is the maximum avoidance of injury.

We submit accordingly that, as a matter of policy, the economic consequences of non-negligent shipboard injury should be borne by the expert stevedore, rather than by his shipowner customer, in cases where the former has supplied unseaworthy equipment. The stevedore, not the owner, is the party who initially selects the gear and who, by making appropriate tests, can seek out flaws which might not present themselves to the naked eye. It is the stevedore, moreover, who knows the age of the equipment and the actual history of its use, and therefore is in a position to set up retirement schedules and conduct periodic retesting with a view to saving the gear from fatigue and overuse. *Booth Steamship Co., supra*, 262 F. 2d at 314–315. The considerations which led this Court to conclude in *Bisso* v. *Inland Waterways Corp.*, 349 U.S. 85, that it would be unsound policy to enforce a contractual provision whereby a towboat exercising control of a towing operation shifted the liability for negligence to the inert tow or barge likewise support the conclusion that the incentive to take more-than-ordinary

measures of care should rest with the party in actual control. "The function of the doctrine of unseaworthiness and the corollary doctrine of indemnification is allocation of the losses caused by shipboard injuries to the enterprise, and within the several segments of the enterprise, to the institution or institutions most able to minimize the particular risk involved." *De Gioia* v. *United States Lines Co.*, 304 F. 2d 421, 425–426 (C.A. 2). In placing the burden of liability on the shipowner, who is powerless to minimize the risk, rather than upon the stevedore, who is not, the court below failed to give effect to this basic maritime policy.

It is no answer that the stevedore here was not found negligent. Where the flawed equipment is at all times within the exclusive control of the stevedore, the owner may be entirely dependent on the testimony of the stevedore's own employees, and will inevitably be hard put to show negligence even where it exists. More important, however, the stevedore may have satisfied the standard of ordinary care, yet still have failed to adopt measures, *e.g.*, special tests and inspections, which would have disclosed the defect. The rule promulgated by the decision below removes any economic incentive for the stevedore to take those precautions which, though they may not be required by the law of negligence, may nonetheless be necessary in order to assure the stevedore's employees a safe place to work.

3. The stevedore's strict responsibility for the seaworthiness of the equipment he brings on board his customer's vessel is closely related to, and may even

be part of, his warranty of workmanlike service. It is not surprising, therefore, that the decisions of this Court relating to that warranty foreshadow the result we urge here. Indeed, in *Reed* v. *The Yaka*, 373 U.S. 410, decided only last Term, the Court stated that a shipowner could recover over from a stevedore for breach of warranty even though the injury-causing defect was latent and the stevedore without fault. A longshoreman had been injured when one of the planks of a wooden pallet on which he was standing broke because of a hidden defect.[6] The Court held that the longshoreman's employer, which had chartered the ship and elected to do its own stevedoring work, could be held liable to the longshoreman for unseaworthiness despite the provisions of the Longshoremen's and Harbor Worker's Compensation Act which, on their face, make exclusive the employer's duty to pay compensation under the Act.[7] The Court justi-

[6] The district court found that the sole cause of the accident was the latent defect in the pallet; it did not find any negligence on the part of the stevedore. 183 F. Supp. 69, 71 (E.D. Pa.).

[7] The precise question before the Court in *The Yaka* was whether the injured longshoreman could proceed *in rem* against the vessel and recover for his injuries. The court of appeals, after concluding that the owner of the ship was absolved from liability since it had chartered the ship to the longshoreman-employer and that the longshoreman-employer was saved from liability by the provisions of the Longshoremen's and Harbor Workers' Compensation Act, held that no libel *in rem* could be sustained against the ship since there was no underlying personal liability to support the *in rem* action. 307 F. 2d 203 (C.A. 3). This Court reversed, not reaching either the question whether an *in rem* libel against the ship is allowable in the absence of underlying personal liability or the question whether the owner of the ship was relieved from liability for unsea-

fied the imposition of that liability partly on the ground that the employer would have had to bear the same economic burden if it had been an independent stevedore hired by the shipowner, observing (p. 414):

> Thus, there can be no doubt that, if the petitioner here had been employed to do this particular work by an independent stevedoring company rather than directly by the owner, *he could have recovered damages for his injury from the owner who could have then under Ryan shifted the burden of the recovery to petitioner's stevedoring employer.* * * * [Emphasis added.]

Although that statement was not, perhaps, necessary to the decision, it was an important step in the Court's reasoning and was apparently concurred in by the two dissenting Justices (Mr. Justice Harlan and Mr. Justice Stewart).

Furthermore, the Court pointed out in *Ryan Stevedoring Co., Inc., supra,* 350 U.S. 124, 133–134, and repeated in both *Crumady, supra,* 358 U.S. 423, 428–429, and *Waterman S.S. Corp., supra,* 364 U.S. 421, 424, that the stevedore's warranty of workmanlike service is "comparable to a manufacturer's warranty of the soundness of its manufactured product"—a warranty which, as we have shown (*supra,* pp. 9–10) is absolute.

If, therefore, the stevedore's warranty is comparable to the manufacturer's, as this Court has repeatedly stated, it too must give rise to strict liability.

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worthiness when it chartered the ship. It was the view that the longshoreman could recover against his employer, and this was sufficient support for the *in rem* action. 373 U.S. at 415–16.

This conclusion is not impaired by the consideration that the stevedore's warranty has been described as one to perform contractual obligations to his customer "with reasonable safety" or "in a reasonably safe manner." See *Ryan Stevedoring Co., supra,* 350 U.S. at 130–134. That standard has nothing to do with the "reasonable man" test pertaining to negligence. The stevedore's duty is not to supply equipment which he "reasonably" believes to be safe, or which he has taken "reasonable" steps to make safe, but equipment which in fact is "reasonably" safe. It is not the degree of care, but the degree of safety, which is less than absolute. This distinction was clearly explained in *Mitchell* v. *Trawler Racer, Inc.,* 362 U.S. 539, 550, which described the shipowner's duty to provide a seaworthy vessel as follows:

> What has been said is not to suggest that the owner is obligated to furnish an accident-free ship. The duty is absolute, but it is a duty only to furnish a vessel and appurtenances reasonably fit for their intended use. The standard is not perfection, but reasonable fitness; not a ship that will weather every conceivable storm or withstand every imaginable peril of the sea, but a vessel reasonably suitable for her intended service. *Boudoin* v. *Lykes Bros. S.S. Co.,* 348 U.S. 336.

By the same token, the stevedore's warranty of workmanlike service amounts to an undertaking not to create hazards which would render the ship unseaworthy.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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